

a relatively no flow chamber in communication with the positive pressure area of the skimmer;

an automatic fill device contained in the chamber;

an overfill drain device contained within the chamber;

wherein the automatic fill device and overfill drain device are attached to an adjustable plate; and

adjusting means for adjusting the height of the plate within the tank.

REMARKS

Claims 1-14 and 16-17 are pending in the application, and claim 15 has been withdrawn. By the foregoing Amendment, new claim 17 is added. Based on the above Amendment and the following remarks, Applicant respectfully requests that the Examiner reconsider all outstanding objections and rejections and withdraw them.

Drawings

A request to approve proposed drawing changes amending Fig. 1 to show reference character 16a is submitted herewith.

Objection to Specification

The specification is objected to as failing to provide proper antecedent basis for the vertically adjustable “member” set forth in claim 5 and the “method” set forth in claim 16.

By the foregoing amendment, the specification has been amended at page 4, line 21 to read: “By way of illustration and for exemplary purposes only, automatic fill device 20 and overfill drain device 60 can be mounted on an adjustable member, such as a platform or plate 80 so that the height of automatic fill device 20 and overfill drain device 60 can be simultaneously adjusted via plate 80, as follows.” Applicant respectfully submits that this amendment does not introduce new subject matter. Rather, the amendment merely makes explicit what is implicitly disclosed in the specification and drawings as filed, namely that the automatic fill device 20 and overfill drain device 60 are in a fixed relationship, which can be accomplished by numerous designs in which the devices are connected to each other (see

original specification at page 4, lines 16-23, Figs. 2-4), including an adjustable member such as a platform or plate.

The specification has also been amended at page 7, line 14 to read, “The desired water level is selected by the following method: adjusting the height of automatic fill device 20 and overfill drain device 60 via plate 80 so that the valve 26 will be at the desired water level.” Applicant respectfully submits that this amendment does not introduce new subject matter. It merely makes explicit what is implicitly disclosed in the specification as filed, namely a method of achieving a desired water level in a pool (see original specification at page 3, lines 16-19, page 5, lines 5-8 and 12-16, page 7, lines 14-21).

Accordingly, reconsideration and withdrawal of the objection are respectfully requested.

Rejection Under 35 U.S.C. § 112

Claims 13 and 14 are rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter not described in the specification. As discussed above, the specification has been amended to state that automatic fill device 20 and overfill drain device 60 can be mounted on an adjustable member, such as a platform or plate 80. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

Rejections Under 35 U.S.C. § 102(b)

Claims 1, 2, 4, 9 and 16 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,537,111 to Whitten, Jr. Claims 1, 2, 4-7 and 16 have been rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,908,206 to Grewing. Claims 1-4, 8 and 16 have been rejected under 35 U.S.C. § 102(b) as being anticipated by 4,621,657 to St. Ledger.

To anticipate a claim, a single prior source must contain all its essential elements. *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 231 USPQ 81, 90 (Fed. Cir. 1986) (“It is axiomatic that for prior art to anticipate under § 102 it has to meet every element of the claimed invention, and that such a determination is one of fact.”).

Claim 1, from which claims 2 and 4 depend, recites a tank in communication with a swimming pool that contains both an automatic fill device and an overfill drain device, wherein setting the height of one of the devices in the tank automatically sets the height of the other device in the tank for the purpose of obtaining a desired pool water level. In contrast, Whitten, Jr. is directed to a system for controlling water level using peripheral drainage gutters rather than a separate surge or level control tank (column 2, lines 10-17 and lines 54-67). Whitten, Jr.'s system includes a motor-operated valve 60 connected to a water-level control sensor 56 mounted in a housing 48 (column 5, lines 5-11). Sensor 56 has multiple probes (ground or reference probe G, low-limit probe A and high-limit probe B) for detecting water level (column 5, lines 17-31). If the water level rises above high-limit probe B, valve 60 closes until the overflow level drops below low-limit probe A (column 5, lines 66-72). If the water level rises about grill 20, a separate adjustable overflow drain is provided within housing 48. The overflow drain comprises a box 45 with frontal opening 53 and a sliding gate 46 (column 6, lines 4-19). The height of the upper edge 51 of sliding gate 46 can be adjusted by moving a handle 49 attached to the gate (column 6, lines 15-22). Whitten, Jr. does not teach or suggest adjusting or setting the height of the water-level control sensor 56 (or valve 60). Rather, sensor 56 remains stationary and the length of the probes A, B determine desired water level. Moreover, Whitten, Jr. does not teach or suggest that setting the height of sensor 56 or sliding gate 46 automatically sets the height of the other device in the tank to obtain a desired water level. Rather, sensor 56 remains stationary, and adjusting the height of sliding gate 46 does not set the height of sensor 56.

Claim 9 recites a skimmer comprising a positive pressure area, a relatively no flow chamber in communication with the positive pressure area, and an automatic fill device and an overfill drain device contained in the chamber, wherein the automatic fill device and overfill drain device are connected in a fixed relationship to each other. Similarly, claim 16 recites a method of achieving a desired water level in a pool comprising the steps of providing a tank in communication with the pool containing an automatic fill device and an overfill drain device in fixed relation to each other, and adjusting the height of the automatic fill device and the overfill drain device to the desired water level. Whitten, Jr. does not teach

or suggest that the automatic fill and overfill drain devices are connected to each other or in a fixed relation to each other, as recited in claims 2, 4, 9 and 16. As illustrated in Whitten, Jr.'s Fig. 1, although sensor 56 and sliding gate 46 are both contained in housing 48, they are not connected to each other or in fixed relation to each other.

Whitten, Jr. does not teach every element of the claimed invention as recited in claims 1, 2, 4, 9 and 16 and therefore cannot anticipate the claimed invention.

Grewing teaches an automatic water level keeper including a tank 25 mounted on adjustable telescoping support legs 53, 54 (column 2, lines 57-65). Tank 25 contains a float valve 41 that senses the height of water level in the tank and an opening 35 in the tank wall for vent and overflow (column 2, lines 16-23). However, Grewing requires a separate overflow pipe 51 to drain off surplus water (column 2, lines 53-54). Float valve 41 is not connected or in a fixed relationship to either opening 35 or overflow pipe 51, and setting the height of float valve 41 within tank 25 does not automatically set the height of the opening 35 or overflow pipe 51, or vice versa. Rather, "The operation of the float valve 41 is preferably established at the factory so that no additional adjustment of the float level is necessary." (column 2, lines 33-35). During operation, if the water level drops, float valve 41 opens and allows water to flow into the pool until the desired level is reached, and surplus water drains off through overflow pipe 51 in the pool wall (rather than through opening 35) (column 2, lines 47-54). To change the desired pool water level, one must raise or lower the entire tank 25 by adjusting the height of telescoping support legs 53, 54 (column 2, lines 57-62), rather than by simultaneously adjusting only the float valve and overfill drain device within tank 25, as recited in claim 1, from which claims 2 and 4-7 depend, and claim 16.

Thus, Grewing does not teach or suggest providing a tank with an automatic fill device connected to an overfill drain device so that setting the height of one device in the tank automatically sets the height of the other device to obtain the desired water level. Rather, Grewing's fill device (float valve 41), and drain device (opening 35 in the tank wall or overflow pipe 51) are not connected in a fixed relationship to each other and are not connected to the vertically adjustable member 53, 54. Grewing specifically teaches away

from adjusting the height of the float valve to obtain a desired water level. The height of Grewing's float valve 41 is not adjustable. Rather, Grewing's entire tank 25 is mounted on an adjustable member 53, 54 and the height of the adjustable member is adjusted to change the height of the entire tank to achieve the desired water level.

Grewing does not teach every element of the claimed invention as recited in claims 1, 2, 4-7 and 16 and therefore cannot anticipate the claimed invention.

Similarly, St. Ledger does not teach every element of the claimed invention as recited in claims 1-4, 8 and 16 and therefore cannot anticipate the claimed invention. St. Ledger teaches an automatic water level monitoring system including housing 3 with an internal chamber 6 containing a rotatably adjustable over flow tube 15 and a vertically oriented water supply line 19 having a diaphragm valve 20 surrounded by an annular float 29 (column 2, lines 1-39). The position of the overflow tube is manually selected (column 2, lines 30-32).

Valve 20 is attached to actuator bar 23 via support rods 24, 25, and rods 24, 25 are connected to an annular bracket 27 to which buoyant float 29 is secured (column 2, lines 47-62). The height of float 29 is adjusted by adjusting support rods 24, 25 (column 2, lines 50-68). Adjusting the support rods 24, 25, (and the height of float 29 of valve 20) does not affect the height of overflow tube 15, and adjusting the height of overflow tube 15 does not affect the height of float 29 or valve 20. Rather, the heights of valve 20 and overflow tube 15 are separately adjusted:

It will be seen, therefore, that by suitable adjustment of the level of the float 29 within the chamber 6 the water level within the chamber 6 as well as in the swimming pool 8 may be automatically maintained within close tolerances about a general water level predetermined by the level adjustment of the float 29 upon its support rods 24 and 25. Also, by suitable rotational adjustment of the overflow tube 15 draining of excessive rain water falling into the pool 8 will occur above the selected maximum water level. (column 3, lines 1-12).

Accordingly, St. Ledger does not teach or suggest providing a tank containing an automatic fill device and an overfill drain device, wherein setting the height of one of the devices in the tank automatically sets the height of the other device, as recited in claim 1 from which claims 2-4 and 8 depend. St. Ledger also fails to teach that the automatic fill device and overfill drain device are connected to each other or in a fixed relationship, as recited in

claims 2, 4, 8, and 16, or providing adjusting means for adjusting the height of both the automatic fill device and the overfill drain device as recited in claims 3 and 8. Accordingly, St. Ledger cannot anticipate the claimed invention.

Based on the foregoing, reconsideration and withdrawal of the rejections under 35 U.S.C. §§ 102(b) based on Whitten, Grewing, and St. Ledger are respectfully requested.

Rejection Under 35 U.S.C. § 103(a)

Claims 1-4, 8-11 and 16 have been rejected under 35 U.S.C. 103(a) as being unpatentable over St. Ledger in view of Maxhimer.

The mere fact that a prior art reference can be modified “should not have made the modification obvious unless the prior art suggested the desirability of the modification,” and a modification which would render the prior art apparatus inoperable for its intended purpose does not establish a *prima facie* case of obviousness. *In re Gordon*, 221 USPQ 1125, 1127 (Fed. Cir. 1984) (citing *In re Imperato*, 179 USPQ 730, 732 (CCPA 1973) and *In re Schulpen*, 157 USPQ 52, 55 (CCPA 1968)). Further, where the prior art teaches away from the claimed invention, it cannot render the claimed invention obvious. *Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc.*, 230 USPQ 416, 420 (Fed. Cir. 1986); *In re Gordon*, 221 USPQ at 1127.

As discussed above, St. Ledger fails to teach or suggest providing a tank (or skimmer) containing an automatic fill device and an overfill drain device, wherein setting the height of one of the devices automatically sets the height of the other device in the tank, as recited in claim 1 from which claims 2-4 and 8 depend and claim 9, from which claims 10-11 depend. Rather, the heights of St. Ledger’s valve 20 and overflow tube 15 are separately adjusted, and therefore St. Ledger teaches away from the claimed invention.

St. Ledger also fails to teach that the automatic fill device and overfill drain device are connected to each other or connected to each other in a fixed relationship, as recited in claims 2, 4, 8, and 16, or providing adjusting means for adjusting the height of both the automatic fill device and the overfill drain device as recited in claims 3, 8 and 10. St. Ledger further fails to teach or suggest that the automatic fill and overfill devices are attached to an

adjustable plate. While St. Ledger's housing 3 defines internal chamber 6, the walls of housing 3 are not adjustable. Maxhimer fails to overcome these deficiencies.

Based on the foregoing, reconsideration and withdrawal of the rejection under 35 U.S.C. 103(a) are respectfully requested.

Allowed Subject Matter

Claim 12 has been allowed, and has been rewritten in independent form as new claim 17.

Conclusion

All objections and rejections have been complied with, properly traversed, or rendered moot. Thus, it now appears that the application is in condition for allowance. Should any questions arise, the Examiner is invited to call the undersigned representative so that this case may receive an early Notice of Allowance.

Respectfully submitted,

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1/4

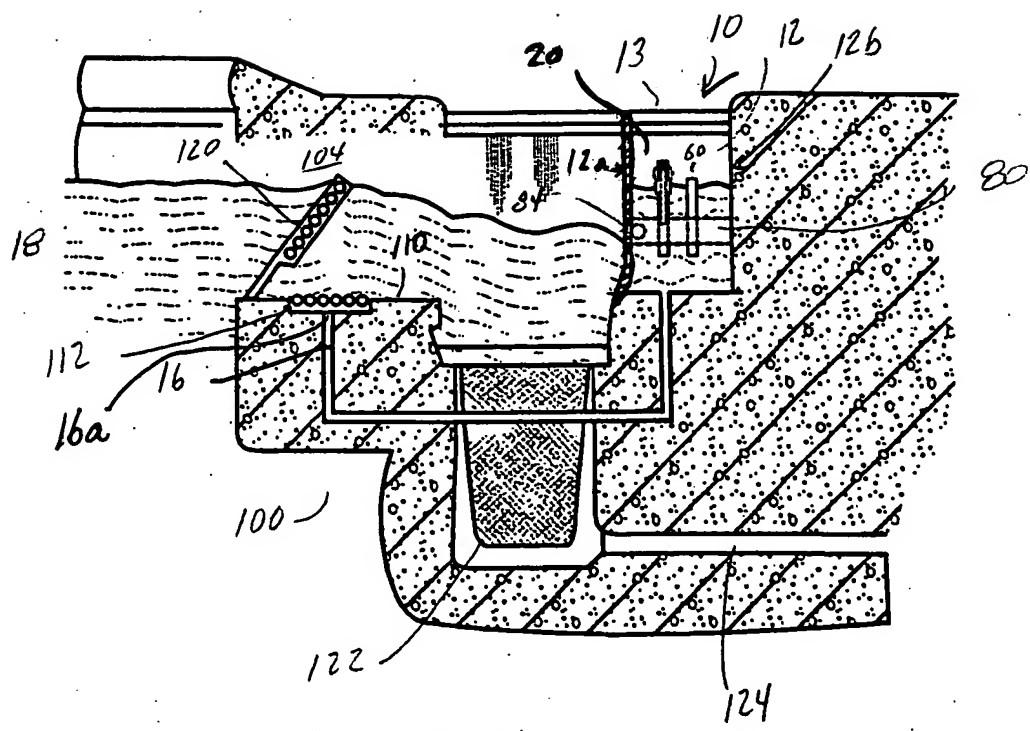


FIG. 1